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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 N. 5TH STREET
KANSAS CITY, KANSAS 66101

IN THE MATTER OF:)	
)	
Houston Wood Treating Company, Inc.)	Docket No. RCRA-07-2001-0025
Houston, Missouri)	
Respondent)	CONSENT AGREEMENT AND
RCRA I.D. No. MOR000043174)	FINAL ORDER
)	
Proceeding under Section 3008(a) and (g))	
of the Resource Conservation and)	
Recovery Act of 1976 (RCRA) of 1976,)	
as amended, 42 U.S.C. § 6928(a) and (g).)	

A. PRELIMINARY STATEMENT

These proceedings were initiated pursuant to Section 3008(a) and (g) of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. § 6928(a) and (g). On September 30, 2002, the Complainant, the Director, Division of Air, RCRA and Toxics, United States Environmental Protection Agency (EPA), Region VII issued a Complaint, Compliance Order and Notice of Opportunity for Hearing (Complaint) to Houston Wood Treating Company, Inc., (Houston or Respondent). The Complaint alleged violations of RCRA by Respondent at its wood treating facility in Houston, Missouri.

B. CONSENT AGREEMENT

GENERAL PROVISIONS

1. For purposes of this proceeding, Respondent admits the jurisdictional allegations of the Complaint and agrees not to contest EPA jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement (Consent Agreement) and the Final Order set forth below (Final Order or Order).
2. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in the Complaint.
3. Respondent agrees not to contest the terms and conditions set forth in this Consent Agreement and Final Order in this or subsequent proceedings to enforce the terms of this Consent Agreement and Final Order.
4. Respondent explicitly waives its right to a hearing on any issue of fact or law set forth in the Complaint.
5. Respondent agrees to the terms of this Consent Agreement and to comply with the terms of the Final Order. The terms of this Consent Agreement and the Final Order shall remain in effect unless modified by a subsequent written agreement between the parties, or until terminated as provided herein.
6. Respondent further consents to the assessment of and to pay the civil penalty as set forth in the Final Order, and any stipulated penalties which may become due and payable for failing to satisfy any requirement of this Consent Agreement.
7. EPA reserves the right to enforce the terms of this Consent Agreement and Final Order by initiating a judicial or administrative action pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent as provided by law for each day of non-

compliance with the terms of the Final Order for which stipulated penalties are not provided, or by seeking any other remedy allowed by law.

8. This Consent Agreement and the Final Order shall be effective upon filing of a fully executed copy with EPA's Region VII, Regional Hearing Clerk. Unless otherwise stated, all time periods stated herein shall be calculated from such date.

9. This Consent Agreement and the Final Order shall remain in full force and effect until such time as the activities required of Respondent herein have been completed to EPA's satisfaction and EPA notifies the Respondent in writing that the Consent Agreement and Final Order have been terminated.

10. This Consent Agreement and Final Order shall resolve Respondent's civil liability for all violations of RCRA specifically alleged in the Complaint.

11. Respondent and EPA each agree to bear their own costs and attorneys' fees.

PENALTY

12. Respondent agrees to pay a mitigated civil penalty of \$10,515 within thirty (30) days of the effective date of this Consent Agreement. If, however, this date falls on a Saturday, Sunday, or federal holiday the payment shall be due on the next business day.

13. Respondent understands that its failure to timely pay any portion of the civil penalty as stated in the Final Order, may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the rate determined by the Secretary of the Treasury on the unpaid balance until such civil penalty and any accrued interest are paid in full.

COMPLIANCE ACTIVITIES

14. Respondent certifies that it has fulfilled, with the exception of the Site Characterization

and Cleanup requirements (Paragraph 21(L) of the Complaint), all compliance activities required in the Complaint.

SITE REMEDIATION

15. Respondent agrees to commence activities to remediate the contamination at Respondent's Facility within sixty (60) days of the Effective Date of this Consent Agreement. Specifically, Respondent shall:

A. Submit a Site Characterization Work Plan to EPA for review and approval within thirty (30) days of the effective date of this Consent Agreement. The Site Characterization Work Plan, at a minimum, shall include the provisions discussed in Paragraph 21 of the Complaint, which are incorporated herein by reference.

B. Upon approval of the Site Characterization Work Plan by EPA, Respondent shall implement the Work Plan in accordance with the approved schedule contained therein.

C. The results of this work shall be submitted to EPA for review and approval in a Site Characterization Report within one hundred twenty (120) days of EPA approval of the Site Characterization Work Plan. The Site Characterization Report, at a minimum, shall include the provisions discussed in Paragraph 21 of the Complaint.

D. Based upon the information provided in the Site Characterization Report and other information available to EPA, EPA will select a cleanup action or actions for the Facility. EPA will provide written notice to Respondent of the cleanup action and any performance standards and cleanup levels that are selected by EPA.

E. Respondent shall submit a Cleanup Action Work Plan for EPA review and approval within sixty (60) days of receipt of written notice that EPA has selected a cleanup action or actions for the Facility. The Cleanup Action Work Plan, at a minimum, shall include the

provisions discussed in Paragraph 21 of the Complaint.

F. Upon EPA approval of the Cleanup Action Work Plan, Respondent shall implement the Work Plan in accordance with the schedule contained therein.

G. Within sixty (60) days of completion of the activities required by the Cleanup Action Work Plan, Respondent shall submit a Cleanup Action Report for EPA review and approval. The Cleanup Action Report, at a minimum, shall include the provisions discussed in Paragraph 21 of the Complaint.

F. EPA will review Respondent's submissions and will notify Respondent in writing of EPA's approval or disapproval of each such submission. In the event of EPA's disapproval, EPA shall specify in writing any deficiencies in the submission. Within thirty (30) calendar days of receipt of EPA comments, Respondent shall modify the submission to incorporate EPA's comments, and shall submit the amended submission to EPA. Upon resubmission, EPA may either approve the submission, or if EPA determines that the submission does not adequately address the comments provided by EPA, return the document. Stipulated penalties shall accrue each day until the document is resubmitted and deemed by EPA to adequately address EPA's comments.

16. Until the completion of the site remediation activities and termination of this Consent Agreement, Respondent agrees to submit monthly updates in writing to EPA describing, in detail, the remedial work that has occurred during the previous month and detailing the activities expected to occur during the upcoming month. The first update shall be due to EPA sixty (60) days after the Effective Date of this Consent Agreement and Final Order.

17. Respondent shall expend such costs as necessary to perform the response activities necessary to remediate the Facility.

18. Within thirty (30) days of EPA's approval of the Cleanup Action Report, Respondent agrees to submit to EPA, for review and approval a detailed accounting of all approvable costs incurred in the remediation of the Respondent's Facility. Approvable costs shall only include costs directly related to the development and submission of work, health and safety, and quality assurance plans; landfarm construction, excavation, and operation; site characterization; and offsite disposal of contaminated soils, if necessary. The determination of what constitutes an approvable cost lies solely with EPA. The accounting shall include copies of all receipts, purchase orders, or other documentation relating to approvable costs.

19. In the event that approvable costs are less than \$109,485, Respondent shall, within thirty (30) days of notice of EPA's approval of the accounting of all approvable costs, submit the payment of a stipulated penalty in accordance with the schedule in Paragraph 24 of this Consent Agreement.

20. The terms of this Consent Agreement are in no way intended to limit the response activities or the costs necessary to remediate the contamination at Respondent's Facility.

STIPULATED PENALTIES

21. According to the schedule set forth below, Respondent shall be liable for a maximum stipulated penalty for each day Respondent has failed to perform each task required by this Consent Agreement within the required time frames:

Days 1-14	\$100 per day
Days 15-30	\$200 per day
Days 31 +	\$300 per day

22. EPA will consider any good faith efforts by Respondent to comply with such deadlines in making any such demand for stipulated penalties.

23. If the site remediation activities described above are not completed in accordance with

Paragraph 15 of this Consent Agreement, Respondent shall pay a stipulated penalty to the United States in the amount of \$109,485.

24. In the event the Respondent completes the remediation activities described above but fails to expend a minimum of \$109,485 as described in Paragraph 19 above, Respondent shall be liable for stipulated penalties according to the schedule set forth below:

<u>Amount of Approvable Cost</u>	<u>Stipulated Penalty</u>
\$0 to \$10,000	\$100,000
\$10,001 to \$20,000	\$90,000
\$20,001 to \$30,000	\$80,000
\$30,001 to \$40,000	\$70,000
\$40,001 to \$50,000	\$60,000
\$50,001 to \$60,000	\$50,000
\$60,001 to \$70,000	\$40,000
\$70,001 to \$80,000	\$30,000
\$80,001 to \$90,000	\$20,000
\$90,001 to \$100,000	\$10,000
\$100,001 to \$105,000	\$5,000
\$105,001 to \$109,485	\$0

24. The total amount of stipulated penalties required by this Consent Agreement shall not exceed \$109,485.

26. Respondent shall pay any stipulated penalties within thirty (30) days after the date of receipt of a written demand from EPA for payment. Payment of stipulated penalties shall be by cashier's or certified check made payable to the "United States Treasury" and shall identify Respondent's name and the docket number and remitted to:

EPA - Region VII
Attn: Regional Hearing Clerk
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251.

SUBMISSIONS

27. Respondents shall submit all documents required to be submitted to EPA by this Consent

Agreement to:

Ms. Elizabeth Koesterer (ARTD/RESP)
Environmental Engineer
U.S. Environmental Protection Agency
Region VII
901 N. 5th St.
Kansas City, Kansas 66101

FINANCIAL ASSURANCES

28. Within thirty (30) days after the Effective Date of this Consent Agreement and thereafter until notice of the termination of this Consent Agreement, Respondent shall demonstrate to EPA that it meets one of the financial assurance mechanisms specified in 40 CFR Section 264.143 for the estimated costs of work to be performed by the Respondent to remediate the Facility.

RESERVATIONS

29. This Consent Agreement and Final Order shall resolve all violations of RCRA directly alleged in the Complaint. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including any which may pertain to Respondent's failure to comply with any of the requirements of this Consent Agreement. This Consent Order shall not be construed as a release, waiver or limitation of any rights, remedies, defenses, powers and/or authorities, civil or criminal, which EPA has under RCRA, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), the Clean Air Act (CAA), or any other statutory, regulatory, or common law enforcement authority of the United States. EPA specifically reserves the right to bring an enforcement action under RCRA 7003, CERCLA 106, and/or any other applicable statutory or regulatory authority if EPA finds that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at the

Respondent's Facility may present an imminent and substantial endangerment to human health or the environment.

ACCESS

30. EPA and its authorized representatives shall have access to Respondent's Facility at all reasonable times to monitor Respondent's remedial activities. Further, nothing herein shall be construed to limit EPA's access authority under RCRA or any other law.

PARTIES BOUND

31. This Consent Agreement shall apply to and be binding upon EPA and Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that it or its directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for them with respect to matters included herein comply with the terms of this Order.

SIGNATORIES

32. The undersigned signatories for Respondent and Complainant hereby certify that they have the authority to sign this Order and to legally bind the respective parties to the terms contained herein.

TERMINATION OF CONSENT AGREEMENT

33. This Order shall terminate upon Respondent's receipt of written notification from EPA that all Respondent's obligations under this Order have been satisfactorily completed.

C. FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of the Consent Agreement set forth above, IT IS HEREBY ORDERED

THAT:

1. Respondent shall pay a mitigated civil penalty of Ten Thousand, Five Hundred and Fifteen Dollars (\$10,515) within thirty (30) days of the effective date of this Consent Agreement and Final Order. Payment shall identify the Respondent's name and the docket number. Payment shall be by cashier's or certified check made payable to the "United States Treasury" and remitted to:

EPA - Region VII
Attn: Regional Hearing Clerk
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251.


A copy of this check should be submitted to:

J. Daniel Breedlove
Office of Regional Counsel
EPA, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

2. In the event that stipulated penalties are due pursuant to the terms of the Consent Agreement, Respondent shall pay such penalties within thirty (30) days of EPA's demand for payment. Such payment, if required, shall be submitted as specified in Paragraph 1 of this Final Order.
3. Respondent and Complainant shall bear their own costs and attorneys' fees.

For the Complainant:

The United States Environmental Protection Agency

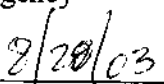


William A. Spratlin,

Director

Air, RCRA, and Toxics Division

U.S. Environmental Protection Agency


Date: 2/20/03

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Region VII


J. Daniel Breedlove

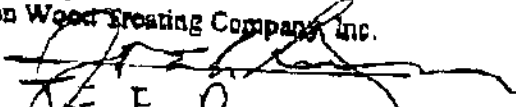
Assistant Regional Counsel

U.S. Environmental Protection Agency
Region VII04/28/03
Date:

For the Respondent:

Houston Wood Treating Company, Inc.

By:


JOE E. Richardson
(Print)Title: vice presidentDate: 8-19-03IT IS SO ORDERED. This Order is effective upon filing of a fully executed copy with
EPA's Region VII, Regional Hearing Clerk.
Robert L. Patrick, Esq.
Regional Judicial Officer

Date:

September 3 2003

IN THE MATTER OF, Houston Wood Treating Company, Inc., Respondent
Docket No. RCRA-07-2001-0025

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

J. Daniel Breedlove
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Facsimile and First Class Pouch Mail to:

Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20460

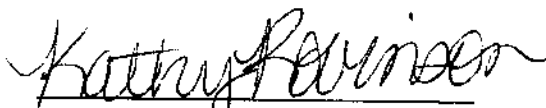
and

Honorable William B. Moran
Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20460

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

John E. Price, Esq.
Carnahan, Evans, Cantwell & Brown, P.C.
2805 S. Ingram Mill Road
P.O. Box 10009 GSS
Springfield, Missouri 65803

Dated: 9/4/03


Kathy Robinson
Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

03 SEP -3 PM 4:10

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)

Houston Wood Treating Company, Inc.)

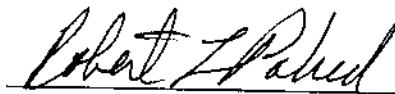
Respondent)
_____)

Docket No. RCRA-07-2001-0025

ORDER AUTHORIZING FACSIMILE FILING

Pursuant to 40 C.F.R. §22.5(a)(1), facsimile filing of the telefaxed signature page (page 11) of the Consent Agreement and Final Order in this proceeding is hereby authorized.

Dated: September 3, 2003



Robert L. Patrick
Regional Judicial Officer

IN THE MATTER OF, Houston Wood Treating Company, Inc., Respondent
Docket No. RCRA-07-2001-0025

CERTIFICATE OF SERVICE

I certify that the foregoing Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

J. Daniel Breedlove
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Facsimile and First Class Pouch Mail to:

Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20460

and

Honorable William B. Moran
Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20460

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

John E. Price, Esq.
Carnahan, Evans, Cantwell & Brown, P.C.
2805 S. Ingram Mill Road
P.O. Box 10009 GSS
Springfield, Missouri 65803

Dated: 9/4/03



Kathy Robinson
Regional Hearing Clerk